



Robert W. Quinn, Jr.  
Federal Government Affairs  
Vice President

Suite 1000  
1120 20th Street NW  
Washington DC 20036  
202 457 3851  
FAX 202 457 2545

March 13, 2002

Via Electronic Filing

Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW, Room TWB-204  
Washington, DC 20554

Re: Notice of Ex Parte Presentations, Application by Verizon-New Jersey for  
Authorization to Provide In-Region, InterLATA Service in the State of  
New Jersey, CC Docket 01-347

Dear Mr. Caton:

On Wednesday March 13, Len Cali, Chris Nurse, Peter Keisler and I, representing AT&T, met with Commissioner Kevin Martin and Sam Feder, Legal Adviser to Commissioner Martin. During this meeting, we reiterated AT&T's concerns with Verizon's non-recurring charge for hot cuts and why those rates do not comply with the Commission's pricing standards as described in the comments and other filings made by AT&T in this proceeding. In addition, we briefly described the deficiencies of Verizon's OSS in New Jersey also as described in the aforementioned filings. Finally, we reiterated the fact that Verizon had filed an incomplete application with the Commission and objected to the establishment of a supplemental comment period for responding to the March 6, 2002 *Final UNE Rate Order* issued by the New Jersey Board of Public Utilities on due process grounds. We also provided a copy of the attached letter motion filed by AT&T in New Jersey earlier on March 13, 2002.

Pursuant to Commission rules, I am filing one electronic copy of this Notice and request that you place it in the record of this proceeding.

Sincerely,

A handwritten signature in cursive script that reads "Robert W. Quinn, Jr." followed by a flourish.

Enclosure

cc: Commissioner Kevin Martin  
Sam Feder, Legal Advisor to Commissioner Martin

March 13, 2002

**BY HAND**

Kristi Izzo  
Secretary  
Board of Public Utilities  
State of New Jersey  
Two Gateway Center  
Newark, NJ 07102

Re: I/M/O the Consultative Report on the Application of  
Verizon New Jersey Inc. for FCC Authorization to  
Provide In-Region, InterLATA Service in New Jersey  
BPU Docket No. TO01090541

Dear Secretary Izzo:

AT&T Communications of NJ, L.P. ("AT&T") submits this letter motion requesting that the Board reverse its finding that Verizon New Jersey Inc. ("VNJ") has complied with checklist item (ii), non-discriminatory access to unbundled network elements ("UNEs") of Section 271 of the Telecommunications Act of 1996 ("Act") and immediately notify the Federal Communications Commission that the Board no longer recommends approval of VNJ's Section 271 application for interLATA authority. AT&T respectfully requests that the Board decide this motion on an expedited basis because the Act's ninety-day period in which the FCC must decide VNJ's Section 271 application expires on March 20, 2002.

The Board should take this action because recent events demonstrate that VNJ is not in compliance with checklist item (ii). First, VNJ has not satisfied the Board's explicit condition that

Kristi Izzo  
Secretary  
March 13, 2002  
Page 2 of 5

VNJ agree to not challenge the Board's UNE rate decisions. Second, new facts demonstrate that VNJ does not provide an accurate wholesale bill to CLECs as required by the Act.

**I. VNJ Has Not Agreed To Waive Any Right To Challenge The Board's UNE Rates**

The Board's consultative report to the FCC made it clear to VNJ, the CLECs and the FCC that its willingness to support VNJ's 271 application was expressly conditioned on VNJ's willingness to adhere to the UNE rates the Board established in the UNE proceeding.<sup>1</sup>

Based upon the evidence in the record, and because the Board has established TELRIC-compliant rates for UNEs in the UNE Summary Order dated December 17, 2001, which are the lowest in the Verizon region and among the lowest in the country, we conclude that Verizon NJ will demonstrate compliance with Checklist Item 2 if it charges no more than the new rates to all CLEC's in New Jersey, effective December 17, 2001, irrespective of any rates currently being charged either through previous agreements or otherwise. *A Verizon NJ challenge to the validity or effective date of the rates or any attempt to increase or otherwise change these rates, will raise the question of whether the modified rates are TELRIC compliant, thus not permitting the Board to find compliance with Checklist Item 2.*

Consultative Report at 24 (emphasis added).

For nearly two months, VNJ stood silent on whether it would accept the Board's condition. Yesterday, however, in response to the Board's demand that VNJ disclose its position, VNJ stated, in no uncertain terms, that it does not accept this condition and will not waive its right to challenge the UNE rates. Letter of B. Cohen to Secretary Izzo, dated March 12, 2002, Docket No. TO00060356. Thus, VNJ has failed to provide the assurance required by the Board in its Consultative Report. Indeed, it is obvious that VNJ intends to challenge the Board's UNE rate

---

<sup>1</sup> I/M/O the Board's Review of Unbundled Network Elements Rates, Terms and Conditions of Bell Atlantic New Jersey, Inc., Docket No. TO00060356.

determinations as soon as its Section 271 application is not pending before the FCC – which is directly at odds with the Board's decision.

The Board was unequivocal in its statements that any VNJ challenge to the rates would cause the Board to reverse its recommendations to the FCC. VNJ had to know from the day the Board announced its UNE rate decision that it planned an appeal, yet stood silent in the hopes that it could win 271 approval before being required to show its hand. This sort of gamesmanship, where VNJ only pretends to comply with the Act's and the Board's market opening conditions long enough to get what it wants, is exactly what the Board's condition was intended to prevent. Accordingly, the Board should modify its consultative report to reflect VNJ's non-compliance with the Section 271 checklist.

It goes without saying that this must be given immediate attention. By law, the FCC must act on VNJ's 271 application one week from today, March 20, 2002. In order for the Board's views to be given full consideration by the FCC, the agency must hear from the Board as soon as possible.

## **II. VNJ's Wholesale Bills Are Discriminatory**

In its Consultative Report, the Board recognized that accurate wholesale bills were critical to the development of a competitive local exchange market and were required by the Act.<sup>2</sup> During this proceeding, numerous parties cautioned the Board against any finding that VNJ provided non-discriminatory access to its OSS absent further commercial data and VNJ's implementation of the new UNE rates. New evidence demonstrates that these cautions were well-founded. VNJ's

---

<sup>2</sup> The Board stated that "Verizon NJ must render timely, accurate and auditable carrier bills to be paid for Verizon-provided services to its CLEC customers." Consultative Report at 40.

Kristi Izzo  
Secretary  
March 13, 2002  
Page 4 of 5

wholesale bills provided after VNJ allegedly implemented the Board's UNE order contain significant errors. This performance harms CLECs and establishes that VNJ does not provide nondiscriminatory access to its OSS.

AT&T provides local service to certain New Jersey business customers through the purchase of the UNE-platform ("UNE-P") from VNJ. VNJ bills AT&T for these wholesale services on a monthly basis. As the Board is well aware, the UNE-P includes the unbundled port and switch. Purchasing VNJ's unbundled port and switch provides a CLEC with, among other things, the ability to provide vertical features to its customers without any additional charges. Thus, any wholesale bill for UNE-P should not include separate charges for features such as touchtone or call waiting.

However, in reviewing a sample of its January and February 2002 UNE-P wholesale bills from VNJ, AT&T discovered that VNJ imposed on certain accounts charges for *both* unbundled switching at UNE rates and for vertical features at retail rates. Copies of such bills along with their billing claims forms are attached to this letter motion. As noted above, there is no basis for both charges to ever appear on the same bill for a customer. This substantial deficiency in VNJ's OSS performance harms CLECs. In order to protect itself from paying numerous incorrect charges, AT&T must expend substantial resources reviewing and analyzing the wholesale bills and requesting credits from VNJ. This imposes unnecessary and significant costs upon CLECs that VNJ does not incur.

Based on this indisputable evidence, the Board should notify the FCC that its previous findings regarding the accuracy of VNJ's wholesale bills are no longer correct.

## **CONCLUSION**

Kristi Izzo  
Secretary  
March 13, 2002  
Page 5 of 5

No doubt, VNJ has placed the Board in a position that the Board did not expect when the Consultative Report was filed. Despite serious misgivings regarding this docket's process overall and VNJ's filing with the FCC before the Board even completed the proceeding, the Board elected to conditionally support VNJ's request for interLATA authority. Two months ago the Board expected VNJ to comply with the conditions in the Consultative Report. VNJ has not done so. VNJ did not satisfy two critical conditions established by the Board.

Thus, now the Board should take appropriate action. AT&T respectfully requests that the Board immediately and formally notify the FCC that the Board's support of VNJ's Section 271 application is withdrawn.

Respectfully submitted,

---

Frederick C. Pappalardo

---

Gregory K. Smith

Encl.

cc: Attached Service List (by e-mail and regular mail)